U.S. Department of Homeland Security
20 Mass Ave., N.W., Rm. A3042
Washington, DC 20529

PUBLIC COPY

U.S. Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

B4

JAN 27 2005

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was initially approved by the Director, California Service Center. Subsequently, the beneficiary applied for adjustment of status. On the basis of new information received and on further review of the record, the director determined that the petitioner was not eligible for the benefit sought. Accordingly, the director properly served the petitioner with a notice of his intention to revoke the approval of the preference visa petition, and his reasons therefore. After the petitioner failed to submit a timely response, the director revoked the approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner was incorporated in the State of California in 1994 and is claimed to be a subsidiary of Liaoning International Leather Products, Inc., located in China. The petitioner claims to be engaged in international trade and the tour agency business. It seeks to employ the beneficiary as its president. Accordingly, the petitioner endeavors to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager. The director approved the immigrant petition on February 21, 1997.

Based on an investigation conducted by investigators from the American Embassy in China regarding the petitioner's parent company, as well as further review of the record, the director issued a notice of intent to revoke the approval on August 16, 2002. The director determined that the petitioner failed to establish the existence of the parent company and, therefore, did not meet its burden of establishing that the beneficiary has the requisite one year of employment abroad with a qualifying entity or that it has a qualifying relationship with a foreign entity. The director also determined that the beneficiary has not been employed in the United States in a primarily managerial or executive capacity. After the petitioner failed to respond to the notice of intent to revoke, the director revoked the approval of the petition on November 6, 2002.

On appeal, counsel refutes all of the director's findings and provides an explanation for the U.S. Embassy's adverse findings regarding the existence of a foreign parent company. Counsel states that on August 16, 2002 the petitioner received the director's "Response to an Intent to Revoke." It is noted that the notice was improperly titled as a "Response," in light of the fact that it was the director's notice informing the petitioner of his intent to revoke approval of the petition. However, this mistake is not germane to the issues at hand and, therefore, will not affect the outcome of this decision. Counsel further states that the petitioner's prior counsel did not inform the petitioner of the intent notice until September 9, 2002 and did not forward the notice to current counsel until September 13, 2002. The petitioner submitted additional evidence for the record addressing the issues previously discussed by the director in the notice of intent to revoke.

CIS is not persuaded by counsel's claim that the petitioner was not informed of the director's notice of intent to revoke until September 9, 2002. The evidence of record clearly shows that the notice of intent was sent to the petitioner's counsel of record. The petitioner did not obtain new counsel until nearly one month after the notice of intent had been issued. There is no evidence to indicate that the petitioner advised CIS, in writing, of a change of counsel and the new counsel's address prior to the issuance of the director's notice of intent. *See* 8 C.F.R. § 292.4. Contrary to counsel's inference, the director was not required to send a copy of his intent to revoke to the petitioner when the record clearly indicated that the petitioner was represented by counsel. *See* 8 C.F.R. § 292.5.

Generally, the decision to revoke approval of an immigrant petition will be sustained, notwithstanding the submission of evidence on appeal, where a petitioner fails to offer a timely explanation or rebuttal to a

properly issued notice of intention to revoke. *Matter of Arias*, 19 I&N Dec. 568, 569 (BIA 1988). For this reason, the decision of the director will be affirmed and the appeal will be dismissed.

Section 205 of the Act, 8 U.S.C. § 1155, states that "[t]he Attorney General may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204 [of the Act]."

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

> In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988)(citing *Matter of Estime*, 19 I&N 450 (BIA 1987)).

By itself, the director's realization that a petition was incorrectly approved is good and sufficient cause for the revocation of a petition's approval, provided the director's revised opinion is supported by the record. *Id.*

Notwithstanding CIS's burden to show "good and sufficient cause" in proceedings to revoke the approval of a visa petition, the petitioner still bears the burden of proof to establish eligibility for the benefit sought. *Id.* at 589; *Matter of Cheung*, 12 I&N Dec. 715 (BIA 1968); see also *Tongatapu Woodcraft of Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984). The approval of a visa petition vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the visa application process. The beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Matter of Ho*, 19 I&N Dec. 582.

In the present case, the director did raise sufficient factual issues to support the revocation. The notice of intent to revoke and the subsequent revocation were based on evidence that was in the record at the time the notice was issued. The petitioner did not offer a timely explanation or rebuttal to the notice of intention to revoke and has not overcome the factual inconsistencies contained in the record. In revocation proceedings, "[i]t is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice." *Matter of Ho,* 19 I&N Dec. at 582.

Notwithstanding the petitioner's submission of evidence on appeal, the petitioner failed to offer an explanation or rebuttal to the director's properly issued notice of intention to revoke. On appeal, counsel offers a seemingly plausible explanation for the U.S. Embassy's adverse findings by claiming that the Chinese government seized the foreign entity's property causing it to have to move to a different location. However, the statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). Moreover, the translated explanation, dated September 12, 2002, which was

submitted in support of the appeal, makes no mention of any government seizure. It simply suggests that the foreign entity's business operations were moved to a different location subsequent to a purchase agreement between two companies, one of which was the foreign entity. This translated explanation is clearly not a contemporaneous document intended as a record of the change of the foreign entity's address. Accordingly, pursuant to *Matter of Arias,* 19 I&N Dec. 569, the director's decision to revoke the petition's approval will not be disturbed.

The petitioner bears the burden of proof in these proceedings. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.